

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW MEXICO

ADLER MEDICAL, LLC; WALT ARNOLD  
COMMERCIAL BROKERAGE, INC; XUAN  
NATION, LLC, AND NM CCIM CHAPTER  
OF THE COMMERCIAL REAL ESTATE INSTITUTE )

Plaintiffs, )

vs. )

Case No. 1:22-cv-00072-SCY-LF

BLAINE HARRINGTON, III )

Defendant/Counterclaim Plaintiff )

Third Party Plaintiff )

vs. )

ADLER MEDICAL, LLC; WALT ARNOLD  
COMMERCIAL BROKERAGE, INC.; XUAN  
NATION, LLC; AND NM CCIM CHAPTER  
OF THE COMMERCIAL REAL ESTATE INSTITUTE, )

Counterclaim Defendants )

and )

CCIM INSTITUTE, )

Third Party Defendant. )

**ANSWER OF PLAINTIFFS TO COUNTERCLAIMS  
OF DEFENDANT BLAINE HARRINGTON III**

Plaintiffs and Counterclaim Defendants Adler Medical, LLC (“Adler Medical”), Walt Arnold Commercial Brokerage, Inc. (“Arnold Brokerage”), Xuan Nation, LLC (“Xuan Nation”) and NM CCIM Chapter of the Commercial Investment Real Estate Institute (“NM CCIM”) here submit their answer to the Counterclaims of Defendant and Counterclaim Plaintiff Blaine Harrington III (“Mr. Harrington”). The Counterclaim Defendants will answer jointly any

allegations of Mr. Harrington's Counterclaims directed to them all; and will answer individually any allegations directed to one of them individually. They will not provide substantive responses to allegations directed to the third-party defendant CCIM Institute. Accordingly, Counterclaim Defendants answer the numbered paragraphs of Mr. Harrington's counterclaims as follows:

1. Counterclaim Defendants admit the allegations of this paragraph of Mr. Harrington's Counterclaims.

2. Adler Medical admits the allegations of this paragraph of Mr. Harrington's Counterclaims.

3. Arnold Brokerage admits the allegations of this paragraph of Mr. Harrington's Counterclaims.

4. Xuan Nation admits the allegations of this paragraph of Mr. Harrington's Counterclaims.

5. NM CCIM admits the allegations of this paragraph of Mr. Harrington's Counterclaims.

6. Counterclaim defendants are without knowledge or information sufficient to admit or deny the allegations of this paragraph of Mr. Harrington's Counterclaims, and so denies them and demands strict proof thereof.

7. Counterclaim Defendants admit the allegations of this paragraph of Mr. Harrington's Counterclaims.

8. Counterclaim Defendants admit the allegations of this paragraph of Mr. Harrington's Counterclaims.

9. Counterclaim defendants are without knowledge or information sufficient to admit or deny the allegations of this paragraph of Mr. Harrington's Counterclaims, and so denies them and demands strict proof thereof.

10. Counterclaim Defendants admit the allegations of this paragraph of Mr. Harrington's Counterclaims.

11. Counterclaim Defendants are without knowledge or information sufficient to admit or deny the allegations of this paragraph of Mr. Harrington's Counterclaims, and so denies them and demands strict proof thereof.

12. Counterclaim Defendants are without knowledge or information sufficient to admit or deny the allegations of this paragraph of Mr. Harrington's Counterclaims, and so denies them and demands strict proof thereof.

13. Counterclaim Defendants are without knowledge or information sufficient to admit or deny the allegations of this paragraph of Mr. Harrington's Counterclaims, and so denies them and demands strict proof thereof.

14. Adler Medical is without knowledge or information sufficient to admit or deny the allegations of this paragraph of Mr. Harrington's Counterclaims, and so denies them and demands strict proof thereof.

15. Adler Medical is without knowledge or information sufficient to admit or deny the allegations of this paragraph of Mr. Harrington's Counterclaims, and so denies them and demands strict proof thereof.

16. Adler Medical is without knowledge or information sufficient to admit or deny the allegations of this paragraph of Mr. Harrington's Counterclaims, and so denies them and demands strict proof thereof.

17. Adler Medical is without knowledge or information sufficient to admit or deny the allegations of this paragraph of Mr. Harrington's Counterclaims, and so denies them and demands strict proof thereof.

18. Adler Medical is without knowledge or information sufficient to admit or deny the allegations of this paragraph of Mr. Harrington's Counterclaims, and so denies them and demands strict proof thereof.

19. Adler Medical is without knowledge or information sufficient to admit or deny the allegations of this paragraph of Mr. Harrington's Counterclaims, and so denies them and demands strict proof thereof.

20. Adler Medical denies the allegations of this paragraph of Mr. Harrington's Counterclaim.

21. This paragraph of Mr. Harrington's Counterclaim states a legal conclusion which requires no response from Adler Medical, but if a response were due, it would deny it.

22. Adler Medical believes the copy of the screenshot shown is a generally accurate copy of a screenshot previously made of its website.

23. Adler Medical admits it has never received a formal written license to use the subject photographs, and that it never contacted Mr. Harrington about obtaining a license.

24. Adler Medical admits that it operates a business of providing health care services and that its website serves its business purpose.

25. Adler Medical admits that it found the subject photograph on the internet, and denies the remaining allegations of this paragraph of Mr. Harrington's Complaint.

26. Adler Medical denies the allegations and implications of this paragraph of Mr. Harrington's Counterclaims, except to admit that Mr. Harrington has apparently used efforts to

identify its use of the subject photograph; that he had his attorneys notify it and accuse it of using the photograph without authorization; and that it has refused to enter a license on the extortionate terms Mr. Harrington has demanded, and that it owes Mr. Harrington no apology.

27. Arnold Brokerage is without knowledge or information sufficient to admit or deny the allegations of this paragraph of Mr. Harrington's Counterclaims, and so denies them and demands strict proof thereof.

28. Arnold Brokerage is without knowledge or information sufficient to admit or deny the allegations of this paragraph of Mr. Harrington's Counterclaims, and so denies them and demands strict proof thereof.

29. Arnold Brokerage is without knowledge or information sufficient to admit or deny the allegations of this paragraph of Mr. Harrington's Counterclaims, and so denies them and demands strict proof thereof.

30. Arnold Brokerage is without knowledge or information sufficient to admit or deny the allegations of this paragraph of Mr. Harrington's Counterclaims, and so denies them and demands strict proof thereof.

31. Arnold Brokerage is without knowledge or information sufficient to admit or deny the allegations of this paragraph of Mr. Harrington's Counterclaims, and so denies them and demands strict proof thereof.

32. Arnold Brokerage admits the allegations of this paragraph of Mr. Harrington's Counterclaim.

33. Arnold Brokerage denies the allegations of this paragraph of Mr. Harrington's Counterclaims.

34. This paragraph of Mr. Harrington's Counterclaim states a legal conclusion which requires no response; but if a response were due, Arnold Brokerage would deny it.

35. Arnold Brokerage believes the copy of the screenshot shown is a generally accurate copy of a screenshot previously made of its website.

36. Arnold Brokerage admits it has never received a formal written license to use the subject photographs, and that it never contacted Mr. Harrington about obtaining a license.

37. Arnold Brokerage admits that it operates a business of providing real estate - related services and that its website serves its business purposes.

38. Arnold Brokerage admits that it found the subject photograph on the internet, and denies the remaining allegations of this paragraph of Mr. Harrington's Complaint.

39. Arnold Brokerage denies the allegations and implications of this paragraph of Mr. Harrington's Counterclaims, except to admit that Mr. Harrington has apparently used efforts to identify its use of the subject photograph; that he had his attorneys notify it and accuse it of using the photograph without authorization; and that it has refused to enter a license on the extortionate terms Mr. Harrington has demanded, and that it owes Mr. Harrington no apology.

40. Xuan Nation is without knowledge or information sufficient to admit or deny the allegations of this paragraph of Mr. Harrington's Counterclaims, and so denies them and demands strict proof thereof.

41. Xuan Nation is without knowledge or information sufficient to admit or deny the allegations of this paragraph of Mr. Harrington's Counterclaims, and so denies them and demands strict proof thereof.

42. Xuan Nation is without knowledge or information sufficient to admit or deny the allegations of this paragraph of Mr. Harrington's Counterclaims, and so denies them and demands strict proof thereof.

43. Xuan Nation is without knowledge or information sufficient to admit or deny the allegations of this paragraph of Mr. Harrington's Counterclaims, and so denies them and demands strict proof thereof.

44. Xuan Nation is without knowledge or information sufficient to admit or deny the allegations of this paragraph of Mr. Harrington's Counterclaims, and so denies them and demands strict proof thereof.

45. Xuan Nation denies the allegations of this paragraph of Mr. Harrington's Counterclaims.

46. Xuan Nation denies the allegations of this paragraph of Mr. Harrington's Counterclaims.

47. This paragraph of Mr. Harrington's Counterclaim states a legal conclusion which requires no response; but if a response were due, Xuan Nation would deny it.

48. Xuan Nation believes the copy of the screenshot shown is a generally accurate copy of a screenshot previously made of its website.

49. Xuan Nation admits it has never received a formal written license to use the subject photographs, and that it never contacted Mr. Harrington about obtaining a license.

50. Xuan Nation admits that it operates a restaurant and that its website serves the purpose of informing the public about its restaurant.

51. Xuan Nation admits that it found the subject photograph on the internet and denies the remaining allegations of this paragraph of Mr. Harrington's Counterclaims.

52. Xuan Nation denies the allegations and implications of this paragraph of Mr. Harrington's Counterclaims, except to admit that Mr. Harrington has apparently used efforts to identify its use of the subject photograph; that he had his attorneys notify it and accuse it of using the photograph without authorization; and that it has refused to enter a license on the extortionate terms of Mr. Harrington has demanded, and that it owes Mr. Harrington no apology.

53. NM CCIM is without knowledge or information sufficient to admit or deny the allegations of this paragraph of Mr. Harrington's Counterclaims, and so denies them and demands strict proof thereof.

54. NM CCIM is without knowledge or information sufficient to admit or deny the allegations of this paragraph of Mr. Harrington's Counterclaims, and so denies them and demands strict proof thereof.

55. NM CCIM is without knowledge or information sufficient to admit or deny the allegations of this paragraph of Mr. Harrington's Counterclaims, and so denies them and demands strict proof thereof.

56. NM CCIM is without knowledge or information sufficient to admit or deny the allegations of this paragraph of Mr. Harrington's Counterclaims, and so denies them and demands strict proof thereof.

57. NM CCIM is without knowledge or information sufficient to admit or deny the allegations of this paragraph of Mr. Harrington's Counterclaims, and so denies them and demands strict proof thereof.

58. NM CCIM is without knowledge or information sufficient to admit or deny the allegations of this paragraph of Mr. Harrington's Counterclaims, and so denies them and demands strict proof thereof.



59. NM CCIM denies there is anything ironical about CCIM Institute's advice to its members, and otherwise states that any articles it publishes speak for themselves.

60. NM CCIM admits the allegations of this paragraph of Mr. Harrington's Counterclaims, except to deny that its meetings are marketing meetings.

61. NM CCIM is sufficiently familiar with the CCIM Institute to deny the allegations of this paragraph of Mr. Harrington's Counterclaims.

62. NM CCIM denies the allegations of this paragraph of Mr. Harrington's Counterclaims.

63. This paragraph of Mr. Harrington's Counterclaim states a legal conclusion which requires no response; but if a response were due, it would deny it.

64. This paragraph of Mr. Harrington's Counterclaim states a legal conclusion which requires no response; but if a response were due, it would deny it.

65. NM CCIM believes the copy of the screenshot shown is a generally accurate copy of a screenshot previously made of its website.

66. NM CCIM admits it has never received a formal written license to use the subject photographs, and that it never contacted Mr. Harrington about obtaining a license.

67. NM CCIM denies the allegations of this paragraph of Mr. Harrington's Counterclaims.

68. NM CCIM admits that it found the subject photograph on the internet and denies the remaining allegations of this paragraph of Mr. Harrington's Counterclaims.

69. NM CCIM denies the allegations and implications of this paragraph of Mr. Harrington's Counterclaims, except to admit that Mr. Harrington has apparently used efforts to identify its use of the subject photograph; that he had his attorneys notify it and accuse it of using

the photograph without authorization; and that it has refused to enter a license on the extortionate terms Mr. Harrington has demanded, and that it owes Mr. Harrington no apology.

70. Counterclaim Defendants reallege and incorporate by reference their responses to paragraphs 1 through 26 of Mr. Harrington's Counterclaims.

71. This paragraph of Mr. Harrington's Counterclaims states a legal conclusion and requires no response from Counterclaim Defendants. Were a response required, they would deny it.

72. This paragraph of Mr. Harrington's Counterclaims states a legal conclusion and requires no response from Counterclaim Defendants. Were a response required, they would deny it.

73. Adler Medical denies the allegations of this paragraph of Mr. Harrington's Counterclaims.

74. Adler Medical admits that it posted the photograph on its website, and denies the remaining allegations of this paragraph of Mr. Harrington's Counterclaims.

75. Adler Medical denies the allegations of this paragraph of Mr. Harrington's Counterclaims.

76. Adler Medical denies the allegations of this paragraph of Mr. Harrington's Counterclaims.

77. Adler Medical denies the allegations of this paragraph of Mr. Harrington's Counterclaims.

78. Adler Medical denies the allegations of this paragraph of Mr. Harrington's Counterclaims.

79. Adler Medical denies the allegations of this paragraph of Mr. Harrington's Counterclaims.

80. Adler Medical denies the allegations of this paragraph of Mr. Harrington's Counterclaims.

81. Adler Medical denies the allegations of this paragraph of Mr. Harrington's Counterclaims.

**WHEREFORE,** Adler Medical asks that judgement be entered in its favor dismissing Mr. Harrington's Counterclaims against it with prejudice.

82. Counterclaim Defendants reallege and incorporate by reference their responses to paragraphs 1 through 13 and 27 through 39 of Mr. Harrington's Counterclaims.

83. This paragraph of Mr. Harrington's Counterclaims states a legal conclusion and requires no response from Counterclaim Defendants. Were a response required, they would deny it.

84. This paragraph of Mr. Harrington's Counterclaims states a legal conclusion and requires no response from Counterclaim Defendants. Were a response required, they would deny it.

85. Arnold Brokerage denies the allegations of this paragraph of Mr. Harrington's Counterclaims.

86. Arnold Brokerage admits that it posted the photograph on its website, and denies the remaining allegations of this paragraph of Mr. Harrington's Counterclaims.

87. Arnold Brokerage denies the allegations of this paragraph of Mr. Harrington's Counterclaims.

88. Arnold Brokerage denies the allegations of this paragraph of Mr. Harrington's Counterclaims.

89. Arnold Brokerage denies the allegations of this paragraph of Mr. Harrington's Counterclaims.

90. Arnold Brokerage denies the allegations of this paragraph of Mr. Harrington's Counterclaims.

91. Arnold Brokerage denies the allegations of this paragraph of Mr. Harrington's Counterclaims.

92. Arnold Brokerage denies the allegations of this paragraph of Mr. Harrington's Counterclaims.

93. Arnold Brokerage denies the allegations of this paragraph of Mr. Harrington's Counterclaims.

**WHEREFORE,** Arnold Brokerage asks that judgement be entered in its favor dismissing Mr. Harrington's Counterclaims against it with prejudice.

94. Counterclaim Defendants reallege and incorporate by reference their responses to paragraphs 1 through 13 and 40 through 52 of Mr. Harrington's Counterclaims.

95. This paragraph of Mr. Harrington's Counterclaims states a legal conclusion and requires no response from Counterclaim Defendants. Were a response required, they would deny it.

96. This paragraph of Mr. Harrington's Counterclaims states a legal conclusion and requires no response from Counterclaim Defendants. Were a response required, they would deny it.

97. Xuan Nation denies the allegations of this paragraph of Mr. Harrington's Counterclaims.

98. Xuan Nation admits that it posted the photograph on its website, and denies the remaining allegations of this paragraph of Mr. Harrington's Counterclaims.

99. Xuan Nation denies the allegations of this paragraph of Mr. Harrington's Counterclaims.

100. Xuan Nation denies the allegations of this paragraph of Mr. Harrington's Counterclaims.

101. Xuan Nation denies the allegations of this paragraph of Mr. Harrington's Counterclaims.

102. Xuan Nation denies the allegations of this paragraph of Mr. Harrington's Counterclaims.

103. Xuan Nation denies the allegations of this paragraph of Mr. Harrington's Counterclaims.

104. Xuan Nation denies the allegations of this paragraph of Mr. Harrington's Counterclaims.

105. Xuan Nation denies the allegations of this paragraph of Mr. Harrington's Counterclaims.

**WHEREFORE,** Xuan Nation asks that judgement be entered in its favor dismissing

Mr. Harrington's Counterclaims against it with prejudice.

106. Counterclaim Defendants reallege and incorporate by reference their responses to paragraphs 1 through 13 and 53 through 69 of Mr. Harrington's Counterclaims.

107. This paragraph of Mr. Harrington's Counterclaims states a legal conclusion and requires no response from NM CCIM. Were a response required, they would deny it

108. This paragraph of Mr. Harrington's Counterclaims states a legal conclusion and requires no response from NM CCIM. Were a response required, they would deny it

109. NM CCIM denies the allegations of this paragraph of Mr. Harrington's Counterclaims.

110. NM CCIM admits that it posted the photograph on its website, and denies the remaining allegations of this paragraph of Mr. Harrington's Counterclaims

111. NM CCIM denies the allegations of this paragraph of Mr. Harrington's Counterclaims.

112. NM CCIM denies the allegations of this paragraph of Mr. Harrington's Counterclaims.

113. NM CCIM denies the allegations of this paragraph of Mr. Harrington's Counterclaims.

114. NM CCIM denies the allegations of this paragraph of Mr. Harrington's Counterclaims.

115. NM CCIM denies the allegations of this paragraph of Mr. Harrington's Counterclaims.

116. NM CCIM denies the allegations of this paragraph of Mr. Harrington's Counterclaims.

117. NM CCIM denies the allegations of this paragraph of Mr. Harrington's Counterclaims.

**WHEREFORE,** NM CCIM asks that judgement be entered in its favor dismissing Mr. Harrington's Counterclaims against it with prejudice.

118 – 128. The allegations of these paragraphs of Mr. Harrington's pleadings appear to be in support of a third-party claim against CCIM Institute, and require no response from Plaintiffs/Counterclaim Defendants. Were a response required, they would be without knowledge or information sufficient to admit or deny them, and, and demand strict proof thereof.

#### AFFIRMATIVE DEFENSES

All the Counterclaim Defendants assert the following affirmative defense to Mr. Harrington's Counterclaims.

1. Mr. Harrington's Counterclaims are barred by the applicable statutes of limitations.
2. Mr. Harrington's Counterclaims are barred by his misuse of copyright based on facts alleged in Plaintiffs' Complaint.
3. Mr. Harrington's Counterclaims are barred by his unclean hands.
4. Mr. Harrington's Counterclaims are barred by his willful misconduct.
5. Mr. Harrington's Counterclaims are barred by his having impliedly licensed Counterclaim Defendants' use of the subject photographs.

6. Mr. Harrington's Counterclaims are barred by principles of waiver and estoppel.

7. Mr. Harrington's Counterclaims are barred by Counterclaim Defendants' fair use of the subject photographs.

**WHEREFORE** the Plaintiffs and Counterclaim Defendants ask this Court to enter a judgement in their favor, granting the relief requested in their Complaint and denying Mr. Harrington's Counterclaims for copyright infringement, and awarding Counterclaim Defendants their costs and attorneys fees incurred in defending those Counterclaims.

Respectfully submitted,

PEACOCK LAW P.C.

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